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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/590,060	06/08/2000	John Edward Pfeifer	PFE-004	1011

7590 04/08/2003

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Stamford, CT 06905

EXAMINER

ROSENBERGER, RICHARD A

ART UNIT	PAPER NUMBER
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2877

DATE MAILED: 04/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/590,060

Applicant(s)

PFEIFER ET AL.

Examiner

Richard A Rosenberger

Art Unit

2877

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 February 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached comments.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 15 and 17-22.

Claim(s) objected to: _____.

Claim(s) rejected: 1-4, 6-14, 23-26.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

1. The remarks filed 19 February 2003 have been considered. The remarks argue that the references to not explicitly teach the use of a look-up table for the "automatic determination" ans in the claims. However, the use of look-up tables is such a well-known manner of implementing such "automatic determinations" that official notice is sufficient. Since the instant specification merely mentions that a look-up table is used and there is no disclosure in the instant specification on how to implement such a look-up table or how to determine the values that would be placed into the look -up table; it is clear that the argument that the use of a look-up table is more than a simple obvious choice of know alternatives manner of implementing the determination is inconsistent with any allegation that the instant disclosure is sufficient under 35 U.S.C. 112, first paragraph. Absent the recognition that look-up tables are so well known in the art that their use in such arrangements is obvious, the disclosure is insufficient to allow those in the art to make and use the claimed arrangement.

The remarks also argue that some of the claims require that the light be passed "axially" through the ampoule. Functionally in order to obtain a measurement it is important that the light pass through the sample being measured, it is not important in what direction the light passes through the sample, and it is a matter of obvious design and expedience to direct the light through the sample in any convenient direction. It is noted that the instant claims contain this

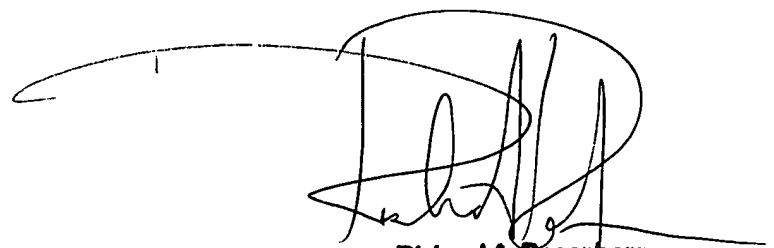
limitation as to direction only broadly, and that claims that contain specific structure to accomplish this are not necessarily obvious over the mere obviousness of selecting a convenient direction to direct the light through the sample.

2. Papers related to this application may be submitted to Group 2800 by facsimile transmission. The faxing of such papers must conform to the notice published in the Official Gazette, 1096 OG 30 (15 November 1989). The fax number is (703) 308-7722.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to R. A. Rosenberger whose telephone number is (703) 308-4804.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0956.

R. A. Rosenberger
3 April 2003



Richard A. Rosenberger
Primary Examiner